

**§ 26.310 Waiver of rules.**

(a) *Request for waivers.* (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) *Denial of waiver, alternate showing required.* If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

**§ 26.311 Defective applications.**

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, executive, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also § 1.2105 of this chapter.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(3) The application is filed prior to the Public Notice issued under § 26.317 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice;

(c) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

**§ 26.312 Inconsistent or conflicting applications.**

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

**§ 26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.**

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications. These are defects which may not be cured. See also § 1.2105 of this chapter.

(b) For GWCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175, to make ownership changes or changes in the identification of parties to bidding consortia, provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for any of the same licenses as the applicant. Amendments which change control of the applicant will be

considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

**§ 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).**

This section applies to all applications for General Wireless Communications Service other than applications filed on FCC Form 175.

(a) Amendments as of right. A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 26.319, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 26.319 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 26.317 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency; or

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its EA or other applicable market area as defined in § 26.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of this chapter.

(e) The Commission may waive the service requirements of paragraph (d)

of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(2) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(3) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

**§ 26.315 Application for temporary authorizations.**

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 26.303 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought